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OFFICE OF PETITIONS

In re Application of
Joseph A. Grundfest, et al.
Application No. 09/718,097
Filed: November 22, 2000
Attorney Docket No. 064.0001

ON PETITION

This is a decision on the petition to filed on September 28, 2005, under 37 CFR 1.181 to withdraw from holding of abandonment, or in the alternative, under 37 CFR 1.137(b) to revive the above-identified application.

The petition under 37 CFR 1.181 is **Dismissed**.

The petition under 37 CFR 1.137(b) is **Granted**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed September 16, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 17, 2004.

Applicant asserts that he did not receive a copy of the September 16, 2004, Office Action, and consequently, did not timely respond to the Office Action. On November 4, 2004, the applicant also stated that his representatives filed a request for change of address.

A review of the file record discloses that the US PTO did receive the change of address on November 4, 2004; however, that was two months after the Office Action was mailed. Specifically, where an attorney of record changes his correspondence address, he is responsible for **promptly** notifying the Office of the new correspondence address. See MPEP § 601.03.

It is also noted that applicant failed to provide a copy of the docket to establish non-receipt of the Office Action. MPEP § 711.03(c)(I)(A) states in pertinent part:

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner

and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action.

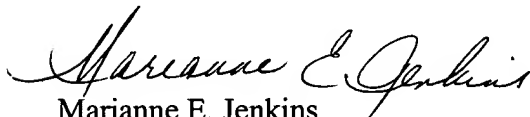
Applicant has not provided proof that the Office Action was not received. In view thereof, the holding of abandonment in the above-identified application was proper and will not be withdrawn.

Nevertheless, the petition satisfies the requirement of 37 CFR 1.137 (b) in that petitioner has supplied (1) the reply in the form of an Amendment; (2) the petition fee of \$1500; and (3) the required statement of unintentional delay have been received. Accordingly, the petition filed September 28, 2005 is accepted as having been unintentionally delayed.

In view of the submission of the petition fee in the large entity amount of \$1,500, status as a small entity has been removed.

Telephone inquiries concerning this matter may be directed to Retta Williams at (571) 272-3229.

The application matter is being referred to Technology Center 3600, Art Unit 3621 for further processing.



Marianne E. Jenkins
Petitions Examiner
Office of Petitions